

The Committee on Education moves to amend the bill on page one, by striking out everything after the enacting clause, and inserting in lieu thereof the following:

"That §12-1-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-2A-1 and §18B-2A-3 of said code be amended and reenacted; that §18B-7-11 of said code be amended and reenacted; and that §18B-19-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12d. Investments by Marshall University and West Virginia University.

(a) Notwithstanding any provision of this article to the contrary, the governing boards of Marshall University and West Virginia University each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that university and which exists on January 1, 2005. ~~Any such~~ The investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to

1 their administration. Any interest or earnings on the moneys
2 invested is retained by the investing university.

3 (c) Moneys of a university that may be invested with its
4 foundation pursuant to this section are those subject to the
5 administrative control of the university that are collected under
6 an act of the Legislature for specific purposes and do not include
7 any funds made available to the university from the State General
8 Revenue Fund or the funds established in sections eighteen or
9 eighteen-a, article twenty-two, chapter twenty-nine of this code.
10 Moneys permitted to be invested under this section may be
11 aggregated in an investment fund for investment purposes.

12 (d) Of the moneys authorized for investment by this section,
13 Marshall University and West Virginia University each,
14 respectively, may have invested with its foundation at any time not
15 more than the greater of:

16 (1) \$18 million for Marshall University and \$25 million for
17 West Virginia University; or

18 (2) Sixty-five percent of its unrestricted net assets as
19 presented in the statement of net assets for the fiscal year end
20 audited financial reports.

21 (3) Notwithstanding subdivisions (1) and (2) of this
22 subsection, with the approval of the Higher Education Policy
23 Commission, Marshall University may increase the amount invested to
24 ~~\$30~~ \$60 million and West Virginia University may increase the
25 amount invested to ~~\$40~~ \$70 million.

26 (e) Investments by foundations that are authorized under this

1 section shall be made in accordance with and subject to the
2 provisions of the Uniform Prudent Investor Act codified as article
3 six-c, chapter forty-four of this code. As part of its fiduciary
4 responsibilities, each governing board shall establish investment
5 policies in accordance with the Uniform Prudent Investor Act for
6 those moneys invested with its foundation. The governing board
7 shall review, establish and modify, if necessary, the investment
8 objectives as incorporated in its investment policies so as to
9 provide for the financial security of the moneys invested with its
10 foundation. The governing boards shall give consideration to the
11 following:

12 (1) Preservation of capital;

13 (2) Diversification;

14 (3) Risk tolerance;

15 (4) Rate of return;

16 (5) Stability;

17 (6) Turnover;

18 (7) Liquidity; and

19 (8) Reasonable cost of fees.

20 (f) A governing board shall report annually by December 31 to
21 the Governor and to the Joint Committee on Government and Finance
22 on the performance of investments managed by its foundation
23 pursuant to this section.

24 (g) The amendments to this section in the second extraordinary
25 session of the Legislature in 2010 ~~shall~~ apply retroactively so
26 that the authority granted by this section shall be construed as if

1 that authority did not expire on July 1, 2010.

2 **ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.**

3 **§18B-2A-1. Findings; composition of boards; terms and**
4 **qualifications of members; vacancies; eligibility for**
5 **reappointment.**

6 (a) *Findings.* -

7 The Legislature finds that the State of West Virginia is
8 served best when the membership of each governing board includes
9 the following:

10 (1) The academic expertise and institutional experience of
11 faculty members and a student of the institution governed by the
12 board;

13 (2) The technical or professional expertise and institutional
14 experience of a classified employee of the institution governed by
15 the board;

16 (3) An awareness and understanding of the issues facing the
17 institution governed by the board; and

18 (4) The diverse perspectives that arise from a membership that
19 is balanced in terms of gender and varied in terms of race and
20 ethnic heritage.

21 (b) *Boards of governors established.* -

22 A board of governors is continued at each of the following
23 institutions: Bluefield State College, Blue Ridge Community and
24 Technical College, Bridgemont Community and Technical College,
25 Concord University, Eastern West Virginia Community and Technical

1 College, Fairmont State University, Glenville State College,
2 Kanawha Valley Community and Technical College, Mountwest Community
3 and Technical College, Marshall University, New River Community and
4 Technical College, Pierpont Community and Technical College,
5 Shepherd University, Southern West Virginia Community and Technical
6 College, West Liberty University, West Virginia Northern Community
7 and Technical College, the West Virginia School of Osteopathic
8 Medicine, West Virginia State University, West Virginia University
9 and West Virginia University at Parkersburg.

10 (c) *Board membership.* -

11 (1) An appointment to fill a vacancy on the board or
12 reappointment of a member who is eligible to serve an additional
13 term is made in accordance with the provisions of this section.

14 (2) The Board of Governors for Marshall University consists of
15 sixteen persons. The Board of Governors for West Virginia
16 University consists of seventeen persons. The boards of governors
17 of the other state institutions of higher education consist of
18 twelve persons.

19 (3) Each board of governors includes the following members:

20 (A) A full-time member of the faculty with the rank of
21 instructor or above duly elected by the faculty of the respective
22 institution;

23 (B) A member of the student body in good academic standing,
24 enrolled for college credit work and duly elected by the student
25 body of the respective institution; and

26 (C) A member from the institutional classified employees duly

1 elected by the classified employees of the respective institution;

2 (4) For the Board of Governors at Marshall University,
3 thirteen lay members appointed by the Governor, by and with the
4 advice and consent of the Senate, pursuant to this section;

5 (5) For the Board of Governors at West Virginia University,
6 twelve lay members appointed by the Governor, by and with the
7 advice and consent of the Senate, pursuant to this section, and
8 additionally:

9 (A) The Chairperson of the Board of Visitors of West Virginia
10 University Institute of Technology;

11 (B) A full-time faculty member representing the extension
12 service at the institution or a full-time faculty member
13 representing the health sciences, selected by the faculty senate.

14 (6) For each board of governors of the other state
15 institutions of higher education, nine lay members appointed by the
16 Governor, by and with the advice and consent of the Senate,
17 pursuant to this section.

18 (A) Of the nine members appointed by the Governor, no more
19 than five may be of the same political party. Of the thirteen
20 members appointed by the Governor to the governing board of
21 Marshall University, no more than eight may be of the same
22 political party. Of the twelve members appointed by the Governor
23 to the governing board of West Virginia University, no more than
24 seven may be of the same political party.

25 (B) Of the nine members appointed by the Governor, at least
26 five shall be residents of the state. Of the thirteen members

1 appointed by the Governor to the governing board of Marshall
2 University, at least eight shall be residents of the state. Of the
3 twelve members appointed by the Governor to the governing board of
4 West Virginia University, at least seven shall be residents of the
5 state.

6 (7) In making lay appointments, the Governor shall consider
7 the institutional mission and membership characteristics including
8 the following:

9 (A) The need for individual skills, knowledge and experience
10 relevant to governing the institution;

11 (B) The need for awareness and understanding of institutional
12 problems and priorities, including those related to research,
13 teaching and outreach;

14 (C) The value of gender, racial and ethnic diversity; and

15 (D) The value of achieving balance in gender and diversity in
16 the racial and ethnic characteristics of the lay membership of each
17 board.

18 (d) *Board member terms.* -

19 (1) The student member serves for a term of one year. Each
20 term begins on July 1.

21 (2) The faculty member serves for a term of two years. Each
22 term begins on July 1. Faculty members are eligible to succeed
23 themselves for three additional terms, not to exceed a total of
24 eight consecutive years.

25 (3) The member representing classified employees serves for a
26 term of two years. Each term begins on July 1. Members

1 representing classified employees are eligible to succeed
2 themselves for three additional terms, not to exceed a total of
3 eight consecutive years.

4 (4) The appointed lay citizen members serve terms of ~~up to~~
5 four years each and are eligible to succeed themselves for no more
6 than one additional term, except that citizen members who are
7 appointed to fill unexpired terms are eligible to succeed
8 themselves for two full terms after completing an unexpired term.

9 (5) A vacancy in an unexpired term of a member shall be filled
10 for the unexpired term within thirty days of the occurrence of the
11 vacancy in the same manner as the original appointment or election.
12 Except in the case of a vacancy, all elections are held and all
13 appointments are made no later than June 30 preceding the
14 commencement of the term. Each board of governors shall elect one
15 of its appointed lay members to be chairperson in June of each
16 year. A member may not serve as chairperson for more than four
17 consecutive years.

18 (6) The appointed members of the boards of governors serve
19 staggered terms of up to four years except that four of the initial
20 appointments to the governing boards of community and technical
21 colleges that became independent July 1, 2008, are for terms of two
22 years and five of the initial appointments are for terms of four
23 years.

24 (e) *Board member eligibility, expenses.* -

25 (1) A person is ineligible for appointment to membership on a
26 board of governors of a state institution of higher education under

1 the following conditions:

2 (A) For a baccalaureate institution or university, a person is
3 ineligible for appointment who is an officer, employee or member of
4 any other board of governors; an employee of any institution of
5 higher education; an officer or member of any political party
6 executive committee; the holder of any other public office or
7 public employment under the government of this state or any of its
8 political subdivisions; an employee of any affiliated research
9 corporation created pursuant to article twelve of this chapter; an
10 employee of any affiliated foundation organized and operated in
11 support of one or more state institutions of higher education; or
12 a member of the council or commission. This subsection does not
13 prevent the representative from the faculty, classified employees,
14 students or the superintendent of a county board of education from
15 being members of the governing boards.

16 (B) For a community and technical college, a person is
17 ineligible for appointment who is an officer, employee or member of
18 any other board of governors; a member of a board of visitors of
19 any public institution of higher education; an employee of any
20 institution of higher education; an officer or member of any
21 political party executive committee; the holder of any other public
22 office, other than an elected county office, or public employment,
23 other than employment by the county board of education, under the
24 government of this state or any of its political subdivisions; an
25 employee of any affiliated research corporation created pursuant to
26 article twelve of this chapter; an employee of any affiliated

1 foundation organized and operated in support of one or more state
2 institutions of higher education; or a member of the council or
3 commission. This subsection does not prevent the representative
4 from the faculty, classified employees or students from being
5 members of the governing boards.

6 (2) Before exercising any authority or performing any duties
7 as a member of a governing board, each member shall qualify as such
8 by taking and subscribing to the oath of office prescribed by
9 section five, article IV of the Constitution of West Virginia and
10 the certificate thereof shall be filed with the Secretary of State.

11 (3) A member of a governing board appointed by the Governor
12 may not be removed from office by the Governor except for official
13 misconduct, incompetence, neglect of duty or gross immorality and
14 then only in the manner prescribed by law for the removal of the
15 state elective officers by the Governor.

16 (4) The members of the board of governors serve without
17 compensation, but are reimbursed for all reasonable and necessary
18 expenses actually incurred in the performance of official duties
19 under this article upon presentation of an itemized sworn statement
20 of expenses.

21 (5) The president of the institution shall make available
22 resources of the institution for conducting the business of its
23 board of governors. All expenses incurred by the board of
24 governors and the institution under this section are paid from
25 funds allocated to the institution for that purpose.

26 **§18B-2A-3. Supervision of governing boards; promulgation of rules;**

1 **data collection and dissemination.**

2 (a) The governing boards are subject to the supervision of the
3 commission or the council, as appropriate, except in those
4 instances where specific statutory exceptions are granted by law to
5 the governing boards of Marshall University and West Virginia
6 University.

7 (b) The governing boards of all state institutions of higher
8 education are subject to the provisions of law that relate to the
9 administration of personnel matters including, specifically,
10 articles seven, eight, nine and nine-a of this chapter and to rules
11 promulgated and adopted in accordance with these provisions.

12 (c) The Chancellor for Higher Education and the Chancellor for
13 Community and Technical College Education, under the supervision of
14 their respective boards, are responsible for the coordination of
15 policies, purposes and rules of the governing boards and shall
16 provide for and facilitate sufficient interaction among the
17 governing boards and between the governing boards and the State
18 Board of Education to meet the goals and objectives provided in the
19 compacts and in section one-a, article one and article one-d of
20 this chapter.

21 (d) The governing boards and the State Board of Education
22 shall provide all information requested by the commission and the
23 council, whether the request is made separately or jointly, in an
24 appropriate format and in a timely manner.

25 (1) Each governing board shall cooperate with the West
26 Virginia Network for Educational Telecomputing (WVNET) in designing

1 appropriate interfaces with the databases of institutions under its
2 jurisdiction and shall grant WVNET direct access to these
3 databases.

4 (2) WVNET, on behalf of the commission or council or both,
5 shall generate reports from the data accessed for the purposes set
6 forth in section five, article one-a and sections eight and ten,
7 article one-d of this chapter.

8 (3) All data accessed or received from an institution shall be
9 treated in a manner consistent with the privacy protections
10 outlined in section ten, article one-d of this chapter.

11 **ARTICLE 7. PERSONNEL GENERALLY.**

12 **§18B-7-11. Employees designated as nonclassified; limits;**
13 **exceptions; reports required.**

14 (a) Notwithstanding any provision of this code to the
15 contrary, by July 1, 2015, the percentage of personnel placed in
16 the category of nonclassified at a higher education organization
17 may not exceed twenty percent of the total number of classified and
18 nonclassified employees of that organization as those terms are
19 defined in section two, article nine-a of this chapter and who are
20 eligible for membership in a state retirement system of the State
21 of West Virginia or other retirement plan authorized by the state.

22 A higher education organization which has more than twenty
23 percent of its employees placed in the nonclassified category as
24 defined by this subsection on July 1, 2011, shall reduce the number
25 of nonclassified employees to no more than twenty-five percent by

1 July 1, 2013, and to no more than twenty percent by July 1, 2015,
2 except as set forth in subsections (b) and (c) of this section.

3 (b) For the purpose of determining the ratio of nonclassified
4 employees pursuant to this section, the following conditions apply:

5 ~~(1) Employees of the commission and the chancellor for higher~~
6 ~~education and employees of the council and the chancellor for~~
7 ~~community and technical college education are considered as one~~
8 ~~organization;~~

9 ~~(2)~~ Organizations ~~may~~ shall count ~~as~~ faculty or classified
10 employees, respectively, ~~administrators~~ who retain the right to
11 return to faculty or classified employee positions, ~~and in the~~
12 employee category they are serving in at the time of reporting as
13 required by subsections (a) and (b), section eight of this article.
14 Such employees will be counted in their original category at such
15 time as they exercise their return rights.

16 ~~(3)~~ (2) Athletic coaches are excluded from calculation of the
17 ratio. The commission and the council shall include consideration
18 of this employee category in each review required by section nine
19 of this article and shall monitor organizations' use of this
20 category and include this information in the reports required by
21 subsections (a) and (b), section eight of this article.

22 (c) An organization may place up to twenty-five percent of the
23 total number of classified and nonclassified employees of that
24 organization as defined by this section in the nonclassified
25 category under the following conditions:

26 (1) The governing board of an institution votes to approve any

1 percentage or fraction of a percentage number above twenty percent
2 and seeks and receives the approval of the commission or council,
3 as appropriate, before increasing the total above twenty percent.

4 ~~(2) In the case of personnel employed by the commission and~~
5 ~~the council, the chancellors jointly shall agree to increase the~~
6 ~~percentage number or fraction of a number of nonclassified~~
7 ~~employees beyond twenty percent and shall recommend this action to~~
8 ~~their respective boards for approval.~~

9 (A) The commission and council each shall approve or
10 disapprove the increase and shall include the vote, as well as
11 details of the position and justification for placing the position
12 in the nonclassified category, in its minute record.

13 (B) The number of nonclassified personnel may not be increased
14 above twenty percent unless the increase is approved by both the
15 commission and the council.

16 ~~(3)~~ (2) *Powers and duties of commission and council regarding*
17 *nonclassified staff ratios. -*

18 (A) It is the duty of the commission and council jointly to
19 establish criteria for the purpose of making decisions on approving
20 or disapproving requests by organizations to exceed the twenty
21 percent limit for personnel placed in the nonclassified category;

22 (B) The commission and council shall provide technical
23 assistance to organizations under their respective jurisdictions in
24 collecting and interpreting data to ensure that they fulfill the
25 requirements established by this section. Consideration of these
26 issues shall be made part of each review required by section nine

1 of this article and information from the review included in the
2 reports required by subsections (a) and (b), section eight of this
3 article;

4 (C) The chancellors shall monitor the progress of the
5 organizations in meeting the deadlines established in this section
6 and shall report periodically to the council and commission. The
7 commission and council shall make a preliminary compliance report
8 to the Legislative Oversight Commission on Education Accountability
9 by September 1, 2013, and a final report on organization compliance
10 to that body by September 1, 2015.

11 (D) Subject to a joint recommendation by the commission and
12 the council and subsequent affirmative action by the Legislature to
13 extend the authority beyond the specified date of termination, the
14 authority of an organization to place more than twenty percent of
15 its personnel in the nonclassified category pursuant to this
16 section expires on July 1, 2016.

17 (d) The current annual salary of a nonclassified employee may
18 not be reduced if his or her position is redefined as a classified
19 position solely to meet the requirements of this section. If such
20 a nonclassified employee is reclassified, his or her salary does
21 not constitute evidence of inequitable compensation in comparison
22 to other employees in the same paygrade.

23 (e) For the purposes of this section only the commission and
24 council are not considered higher education organizations.

25 **ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.**

26 **18B-19-6. Capital project financing.**

1 (a) The commission and governing boards, jointly or singly,
2 may issue revenue bonds for capital project financing in accordance
3 with section eight, article ten of this chapter.

4 (b) A governing board may seek funding for and initiate
5 construction or renovation work only for projects contained in an
6 approved campus development plan.

7 (c) A governing board may fund capital improvements on a cash
8 basis, through bonding or through another financing method that is
9 approved by the commission and by the council, if appropriate.

10 (1) ~~If the~~ Any time the cumulative total cost of an
11 improvement project for any institution, except Marshall University
12 or West Virginia University, exceeds ~~\$1~~ \$2 million, the governing
13 board first shall obtain the approval of the commission or council,
14 as appropriate. ~~If the~~ Any time the cumulative total cost of an
15 improvement project for Marshall University or West Virginia
16 University exceeds ~~\$15~~ \$30 million, the governing board first shall
17 obtain the approval of the commission.

18 (2) Prior to approving bonding or any alternative financing
19 method, the commission, and council if appropriate, shall evaluate
20 the following issues:

21 (A) The institution's debt capacity and ability to meet the
22 debt service payments for the full term of the financing;

23 (B) The institution's capacity to generate revenue sufficient
24 to complete the project;

25 (C) The institution's ability to fund ongoing operations and
26 maintenance;

1 (D) The impact of the financing arrangement on students; and

2 (E) Any other factor considered appropriate.

3 (d) A governing board shall notify the Joint Committee on
4 Government and Finance at least thirty days before beginning
5 construction or renovation work on any capital project in excess of
6 \$1 million.

7 (e) The commission may pledge all or part of the fees of any
8 or all state institutions of higher education as part of a system
9 bond issue.

10 (f) Any fee or revenue source pledged prior to the effective
11 date of this section for payment of any outstanding debt remains in
12 effect until the debt is fully repaid or refunded.

13 (g) The commission and council shall conduct a study regarding
14 higher education governance and various aspects of higher education
15 capital projects and facilities. The commission and council shall
16 complete the study and report their findings, conclusions and
17 recommendations, together with drafts of any legislation or rule
18 changes necessary to effectuate the recommendations, to the
19 Legislative Oversight Commission on Education Accountability no
20 later than December 1, 2013. The study shall include examination
21 of the following issues:

22 (1) The impact of commission and council oversight of and
23 approval authority over institutions and capital projects pursuant
24 to this article;

25 (2) The impact of the dual authority of governing boards and
26 the commission or council, as appropriate, over an institution;

1 (3) The impact of public-private partnerships in higher
2 education capital projects and facilities, including the ability of
3 an institution to avoid application of this article as well as
4 other state laws governing public contracts; and

5 (4) The effect of institutions avoiding the provisions of this
6 article by combining smaller projects for which commission or
7 council approval is not required to form a larger project which
8 would require commission or council approval if regarded in total."